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10/716,853

11/20/2003

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10/09/2007

EXAMINER

GRAY, PHILLIP A

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The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/716,853
Filing Date: November 20, 2003
Appellant(s): GANDRAS, ERIC JOHN

MAILED

OCT 09 2007

Group 3700

Eric John Gandras
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/17/2007 appealing from the Office action mailed 4/19/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings, which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-31, 33-44, 46-57 and 59-64 which are pending in the application.

Claims 32, 45, and 58 have been cancelled previously.

Claims 1-4, 10, 12-20, 23, 25-26, 28-30, 33-35, 38-42, 44, 46-48, 51-55, 57, 59-61, and 64 are rejected under 35 U.S.C. 102(b).

Claims 5-9, 11, 21-22, 24, 27, 31, 36, 37, 43, 49, 50, 56, 62, 63 are rejected under 35 U.S.C. 103(a)

Applicant's brief incorrectly stated that all the claims were rejected under 102(b), and didn't reflect the 103(a) rejections. The correct rejections of the claims, as they were set forth in the previous Non Final and Final Office Actions are shown above.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,030,369

Engelson et al.

02-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-4, 10, 12-20, 23, 25-26, 28-30, 33-35, 38-42, 44, 46-48, 51-55, 57, 59-61, and 64 are rejected under 35 U.S.C. 102(b) as being anticipated by Engelson et al. (U.S. Patent Number 6,030,369).

Engelson discloses a catheter for use in angiographic procedures. The Engelson soft flexible elastic catheter (as in figure 1) has a primary curve (between element 106 and 104) and secondary curve (between 104 and 102), a first tapered section and second tapered section (see figures 2,3,4, and 5) with a flexible soft elastic tapered end section (120, 112). Engelson further teaches that the second tapered section tapers from an inner diameter of 0.035 inches, and wherein the outer diameter tapers from 4 to 3 French with an overall length of between 76cm and 87cm (see paragraph at column 4 line 6) or variable.

Claims 5-9, 11, 21-22, 24, 27,31, 36, 37, 43, 49, 50, 56, 62, 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Engelson et al.

Concerning claims 5, 6, 7, 8, 9; Engelson discloses the claimed invention except for disclosing the exact size specifications of certain centimeter lengths of the catheter between the curves and tip. It would have been obvious to one having ordinary skill in the art at the time the invention was made to size the catheter with the exact dimensions of length of tapered catheter curve sections, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Concerning claim 11; Engelson discloses the claimed invention except for the primary curve is 360 degrees. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the 180 degree curve to 360 degrees, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233 (CCPA 1955).

Concerning claims 21-22, 24; Engelson discloses the claimed invention except for the specific hub length and dimensions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create a hub with the specific dimensions as in the claim limitations, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Concerning claim 27, 36, 37, 49, 50, 62, and 63; Engelson discloses the claimed invention except for the straightner, tapered end section, and second tapered section being formed separately removable. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the straightner, tapered end section, and second tapered section separately removable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. *Newin v. Erlichman*, 168 USPQ 177 (BdPatApp&Int 1969).

Concerning 31, 43, and 56; Engelson discloses the claimed invention except for making the catheter out of a germ retarding material. It would have been obvious to

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one having ordinary skill in the art at the time the invention was made to make the catheter formed from a germ retarding material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960).

(10) Response to Argument

Applicant's argument is directed towards the fact that all pending claims rise or fall with the position that "the reference of Engelson does not show or disclose a tapered section incorporating/having a "curve", let alone an "end section" having a tapered section including a curve" (see Applicant's brief at page 3, first paragraph of arguments section).

It is examiner's position that Engelson does disclose a tapered section incorporating having a "curve" and further that there is an "end section" that has a tapered section, which includes a "curve"

The independent claims at issue as currently written and standing are as follows:

Claim 1: A catheter for use in pelvic angiographic procedures comprising: a primary curve; a first tapered section; a secondary curve; and a second tapered section; wherein the second tapered section has at least one curve

Claim 39: A catheter including a tapered end section; wherein the tapered section has at least one curve.

Claim 52: A tapered end section for a catheter; wherein the tapered end section has at least one curve.

As shown in clearly in figures 1-3, Engelson discloses a primary curve (between element 106 and 104 in figure 1) and secondary curve (between 104 and 102 as in figure 1), a first tapered section and a second tapered section that has at least one curve (see various tapered sections such as upper and lower portions at element 122, 126, 127, 128 shown in figures 2 and 3, or as in figure 1 conversions from sections 106 to 104, and 104 to 102, and 102 to 112). Further concerning claims 39 and 52, which include claim language concerning "a tapered end section", examiner is of the position that anything after element 106 as in figure 1 of Engelson would be considered the "end section" and this end section

During examination, claim limitations are to be given their broadest reasonable reading. In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989); In re Prater, 415 F.2d 1393, 1404-1405, 162 USPQ 541, 550-51 (CCPA 1969). Examiner is reading "taper" to mean

1. To become gradually narrower or thinner toward one end.
2. To diminish or lessen gradually.

And "curve" to mean

- a. A line that deviates from straightness in a smooth, continuous fashion.
- b. A surface that deviates from planarity in a smooth, continuous fashion.
- c. Something characterized by such a line or surface, especially a rounded line or contour of the human body.
- d. A line representing data on a graph.
- e. A trend derived from or as if from such a graph: *"Once again, the politicians are behind the curve" (Ted Kennedy)*.
- f. The graph of a function on a coordinate plane.
- g. The intersection of two surfaces in three dimensions.

The examiner considers the end section to encompass from the end of element 106 to end of 112, or along elements 106~104~102~112. This end section is "tapered" (various tapers) and contains a "curve" (multiple curves/primary and secondary curves). It should further be noted that figure 2 depicts a magnified section of a catheter body showing the aspects of one variation of the invention. Desirably, the more proximal portion (104) of the catheter body (103). For further discussion of the various "tapered" sections of Engelson, Examiner directs attention to Engelson paragraphs at column 5 lines 56-column 6 line 9.

See relevant figures and elements below:

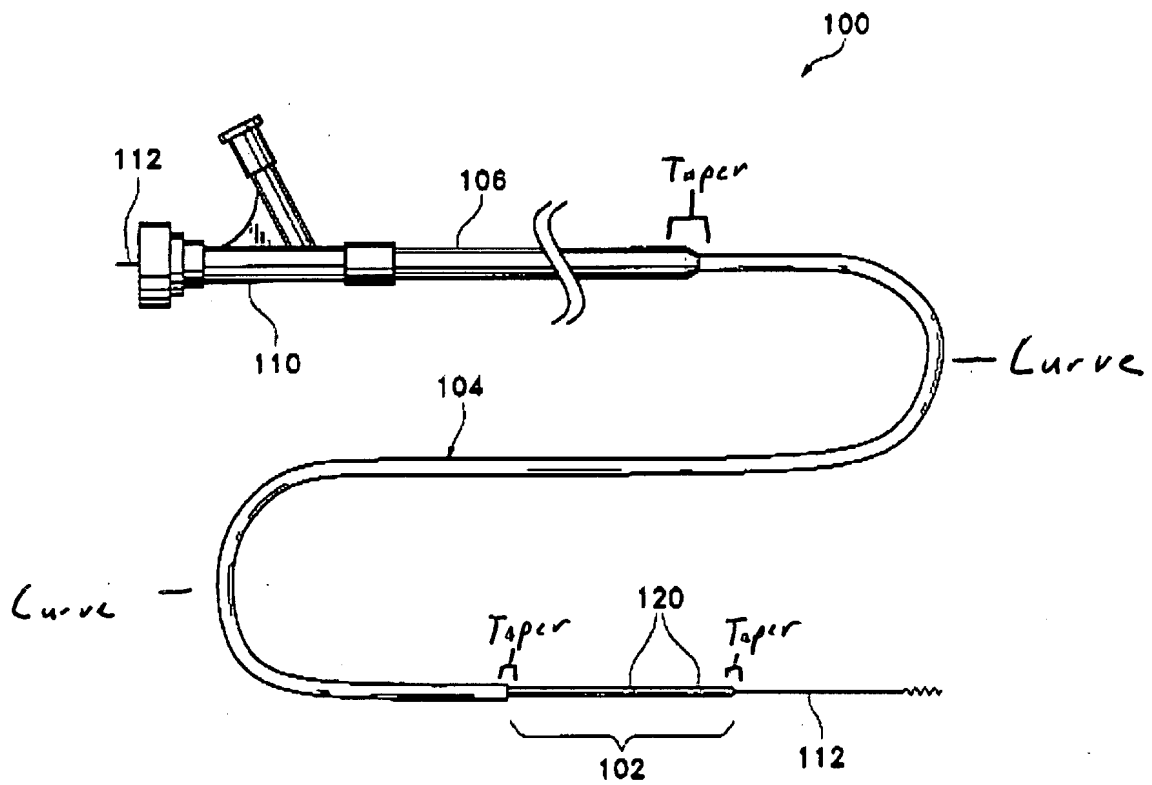


Fig. 1

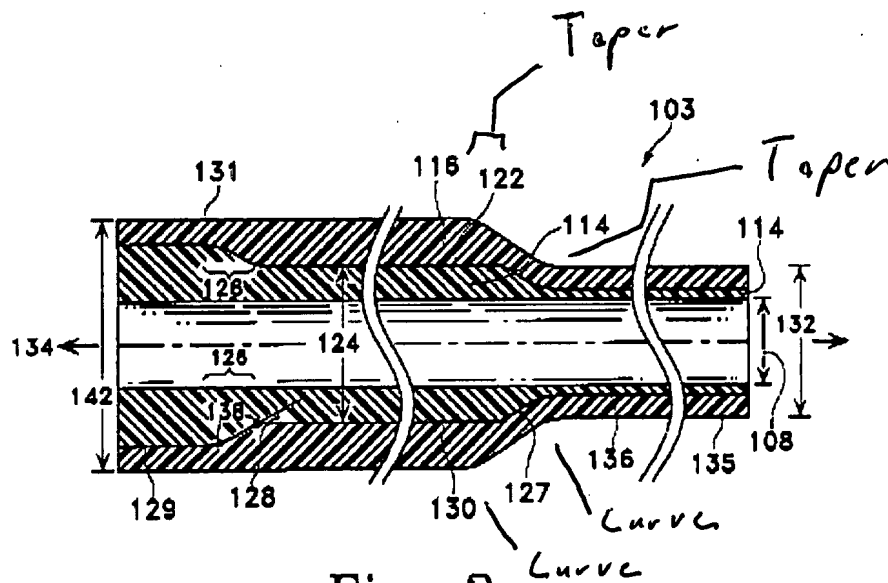


Fig. 2

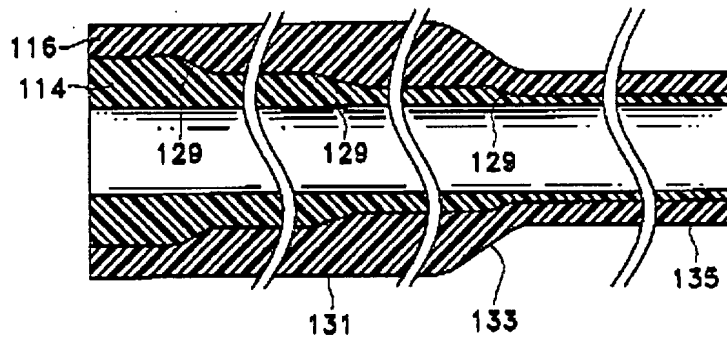


Fig. 3

The elements disclosed in Engelson are fully capable of satisfying all structural, functional, spatial, and operational limitations in the amended claims (particularly a tapered end section containing various curves) and the rejection is made and proper.

(11) Related Proceeding(s) Appendix

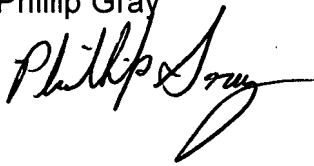
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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

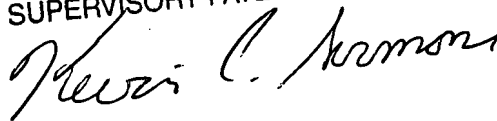
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